IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.888 OF 2007

Nehru Science Centre ..Petitioner

V/s.

S.D.Khot & ors. ..Respondents

Mr.J.P.Kama, Senior Counsel, Vandana Vichare & Niranjan Mogre i/b. M/s.Haresh Mehta & Co. for the petitioner
Respondent in person

CORAM : D.B.BHOSALE, J

DATE : 1ST AUGUST, 2007

P.C.

1. Heard Mr.J.P.Kama, learned senior counsel for the petitioner and respondent No.1 in person.

2. This Writ Petition is directed against the Judgment and Order dated 30th August, 2006 by which an issue whether the domestic inquiry held against the workmen was as per the principles of natural justice has been answered in the negative holding that the inquiry is not fair and proper and

findings are perverse. The petitioners are allowed to lead evidence to prove the charge to justify the quantum of punishment given against the respondents-workmen.

3. Mr. J.P.Kama, learned senior counsel for the petitioner challenged the impugned award on ground that the petitioner is an autonomous body functioning under the Ministry of Culture, Government of India and is not an industry as defined under Section 2(j) of the Industrial Dispute Act, 1947 and, therefore, the reference is not maintainable. The issue whether the petitioner is not an industry as defined under section 2(j) though was framed, the Presiding officer has not recorded his finding and has simply stated issue does not arise. It is true that in paragraph nine of the Judgment to some extent he has discussed whether the petitioner is an industry or not but he has not recorded his final conclusion in view of the fact that the issue was not seriously contested. It is against this background, after arguing for some time Mr.J.P.Kama, learned senior

counsel fairly stated that I need not record reasons for disposing of this writ petition. In view of the peculiar facts and circumstances, in my opinion, the Writ Petition can be disposed of by giving directions to the Tribunal to allow the petitioner to raise this issue at the stage of disposal of part II proceedings. The respondent in person also has no objection for granting such liberty. Having considered the submissions of the Learned Senior Counsel for the Petitioner and the respondent in person, I am satisfied that the following order shall meet the ends of justice.

(a) The petitioner is allowed to raise an issue as to whether the petitioner is an industry as defined under Section 2(j) of the Industrial Dispute Act, 1947 at the stage of part II proceedings of the award and is also allowed to lead evidence in support thereof. The Tribunal shall decide the said issue, if raised, on merits in accordance with law without being influenced by the observations made in paragraph nine of the impugned Order. The Tribunal shall dispose of the reference as expeditioiusly as possible and preferably within a period of nine months from the date of receipt of this order. All contentions are kept open. If this issue is answered in favour of the

petitioner.It is needless to express that the Tribunal will have to answer the issue of jurisdiction afresh.

(b) All contentions raised in the petition challening the part I of the award are also kept open for the petitioner to raise in further proceedings if the Award disposing of part II proceedings is adverse to the petitioner. The Writ Petition accordingly stands disposed of.

(D.B.BHOSALE, J.)